

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 933 OF 2020

Sangharsh Vijay Gavhale	 Applicant
Versus	
The State of Maharashtra	 Respondent

**WITH
ANTICIPATORY BAIL APPLICATION NO. 970 OF 2020**

Mangesh Madhukar Omase	 Applicant
Versus	
The State of Maharashtra	 Respondent

Mr. Niranjan Mundargi i/b. Ranjeet Pawar for Applicant in
ABA/933/2020.

Mr. Sudeep Pasbola, i/b. Karl. P. Rustomkhan for Applicant in ABA/
970/2020.

Ms. P. N. Dabholkar, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 02nd MARCH, 2021

P.C. :

1. The Applicants are seeking anticipatory bail in connection with C.R.No. 568 of 2020 registered with Baramati City Police Station, Pune, on 18/11/2020, under sections 306, 506 r/w. 34 of the Indian Penal Code (for short 'IPC') and under sections

32, 39 and 45 of the Maharashtra Money Lending (Regulation) Act, 2014.

2. The First Information Report (for short 'F.I.R.') is lodged by one Pratik Shah on 18/11/2020. He has stated that, he was residing with his parents, wife and younger sister. His father Preetam Shah was having different businesses in the nature of Cement, steel dealership, petrol pump, tyre dealership etc. His father had property at village Saval and Jalochi, Tal. Baramati, Dist. Pune. The F.I.R. mentions various instances when the informant's father had taken loan from various persons. In August, 2019 he had executed a document in respect of sale of land at village Saval. In March, 2020 the informant came to know that his father had mortgaged his land and building with one Jaysing @ Bablu Ashokrao Kate Deshmukh. The informant himself had taken Rs.10 lakhs by way of hand loan from the applicant Mangesh Omase, one year prior to lodging of F.I.R. At that time, he had given a blank cheque of Ratnakar Bank to him. According to the first informant, he had returned that amount of Rs.10 lakhs to the

applicant Mangesh within three days. However, the interest was outstanding. It is further mentioned in the F.I.R. that the applicant's father had taken Rs.10 lakhs from the applicant Mangesh and the applicant Mangesh was taking interest @ 10%p.m.

3. There are allegations in the F.I.R. that the applicant Sangharsh Gavhale had also given some loan on interest to informant's father Preetam. It is his case in the F.I.R. that in September, 2020 either of these money lenders used to call his father and used to threaten him for returning of their amounts. According to him, his father had told him that, besides these two applicants, Bablu Deshmukh, Kunal Kale, Sanjay Kate, Vikas Dhanke, Pravin Galinde, Hanumant Gavli and Sunny Avhale were troubling him for interest. Because of pandemic there was recession in their business and they were in bad financial condition. There are specific allegations in the F.I.R. that, on 22/10/2020 Sanjay Kate's associate Vikas Dhanke had come to the informant's house and had threatened the informant's parents.

There are allegations that the applicant Mangesh called the informant and had asked for that repayment. He had again called but this time the informant's mother had picked up the call and had told him not to cause harassment. It is mentioned in the F.I.R. that, his father Preetam was under pressure and he was scared. In the evening of 22/10/2020 Preetam consumed poisonous insecticide. He was removed to a hospital. He survived for a few days and he died on 11/11/2020. On 16/11/2020 when the informant was cleaning his shops, he found a suicide note kept in a drawer. In that suicide note the deceased had written that, he was committing suicide because of harassment caused for repayment of money by both these applicants and Sanjay Kate, Sunny Avhale, Gavali and Pravin Galinde. Based on this suicide note the informant lodged this F.I.R.

4. Shri. Pasbola, learned counsel for the applicant Mangesh submitted that, he had given Rs.8,50,000/- by way of loan, out of which Rs.5 lakhs were repaid. It is a specific case of Shri. Pasbola that the applicant Mangesh had not spoken with the

deceased for about 4 to 5 months prior to the incident. There is a reference to only two calls made by him, but those calls were picked up by the informant and his mother. There was no conversation between the applicant Mangesh and the deceased on these occasions.

5. Shri. Niranjana Mundargi appearing for the applicant Sanghrsh submitted that there were no phone calls at all between deceased and this applicant. According to him, no loan was advanced by this applicant to deceased.

6. Both the learned counsel submitted that, even otherwise, their acts would not amount to abetment as defined under section 107 of IPC and consequently, section 306 of IPC cannot be attributed to them. They submitted that, asking for repayment of the loan which was only given to help the deceased's family financially will not amount to any offence much less offence under section 306 of IPC.

7. Learned APP opposed this application. She relied on the allegations in the F.I.R., as well as, investigation carried out so far. She submitted that the applicant Gavhale had given Rs.3 lakhs by way of loan and the F.I.R. mentions that Mangesh had given Rs.10 lakhs by way of loan. This fact can hardly be disputed at this stage. She submitted that, it is a fact that the deceased had committed suicide because of their constant demands and even suicide note is written in the same manner, therefore, the applicants cannot escape the allegations of abetment of commission of suicide. However, the learned APP fairly pointed out the recorded conversations between both these applicants and the deceased recorded in the handset of the deceased. These conversations were on separate occasions. I have perused the transcript of these conversations. Learned APP could not point out any threats in those conversations. Those conversations only relate to the discussion about repayment of loan and the mode of repayment, however, no threats are mentioned in these conversations, as fairly submitted by the learned APP.

8. I have considered all these aspects. Though, suicide note itself mentions names of the present applicants along with others, this has to be looked at, in the background of facts of this case. The recorded conversations between the applicant and deceased do not refer to any threats given by the present applicants. The F.I.R. itself indicates that the loan was taken by the deceased because family of the deceased was in dire financial state. The applicants had not approached the deceased in advancing loan. Therefore, asking for repayment of loan when the applicants themselves needed money in the period of spread of pandemic cannot be termed as an offence. The conversations between the parties also indicate that the applicants were merely asking the deceased to repay their amounts, beyond that there does not appear to be any threats issued by either of the applicants.

9. It is also important to note that the F.I.R. itself mentions that, on 22/10/2020 one Vikas Dhanke associate of Sanjay Kate had approached the deceased and had threatened

him. This could be a proximate cause as submitted by both learned counsel. Hence, as is indicated in the F.I.R. itself, it shows that the calls made by Mangesh were answered by the informant and his mother. There was no conversation between the applicant Mangesh and the deceased. Similarly, there are no immediate calls between the applicant Gavhale and the deceased. Therefore, there does not appear to be a proximate cause showing involvement of the applicants in causing extreme harassment to the deceased. In this view of the matter, it is doubtful whether offence under section 306 of IPC can be made out against them. The investigation is still in progress and the trial is yet to be conducted. Therefore, it would not be appropriate to comment anything further on this aspect. All the observations made in this order are restricted to passing of this order and they shall not be used either for the purpose of investigation or during conduct of trial. Considering the above discussion, custodial interrogation of the applicants is not justified and they can be protected by an order or anticipatory bail.

10. Hence, the following order :

ORDER

- (i) In the event of their arrest in connection with C.R.No. 568 of 2020 registered with Baramati City Police Station, Pune, the applicants are directed to be released on bail on their furnishing PR bonds in the sum of Rs.30,000/- each (Rupees Thirty Thousand each Only) with one or two sureties each in the like amount.
- (ii) Both the applications stand disposed of accordingly.

(SARANG V. KOTWAL, J.)